

Defendants, through undersigned counsel, hereby submit the following answer to Plaintiffs' complaint:

As to some or all of the claims asserted in this action, Plaintiffs have failed to state a claim upon which relief may be granted.

The Complaint is moot insofar as EPA is currently processing the FOIA request from Landmark Legal Foundation by collecting and reviewing requested documents.

Landmark Legal foundation did not meet its burden to demonstrate that it is entitled to expedited processing under EPA's regulations, and therefore EPA's denial of expedited processing is proper.

FOURTH DEFENSE

As a separate and further defense, answering specifically the numbered paragraphs of Plaintiffs' complaint and without waiving any defenses and/or objections, Defendants admit, deny, or otherwise aver as follows:

JURISDICTION AND VENUE

1. EPA admits that jurisdiction is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).
2. EPA admits that venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. EPA is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3 of the Complaint.
4. EPA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint. EPA denies that Landmark Legal Foundation presented evidence sufficient to meet its burden to demonstrate that it was primarily engaged in the dissemination of information to the public and therefore denies that Landmark's primary activity is dissemination of information to the public.
5. EPA admits that it is a federal agency within the meaning of 5 U.S.C. § 552(f)(1). EPA's Headquarters is located at 1200 Pennsylvania Ave., N.W., Washington D.C. 20460.

LANDMARK'S FOIA REQUEST

6. The allegations in Paragraph 6 consist of Plaintiff's characterizations of both the context and content of its FOIA request to which no answer is required. The attachments to that request speak for themselves and are the best evidence of their contents. To the extent that a response is deemed necessary, EPA denies the allegations in Paragraph 6.
7. The allegations in Paragraph 7 consist of Plaintiff's characterizations of both the context and content of its FOIA request to which no answer is required. The attachments to that request speak for themselves and are the best evidence of their contents. To the extent that a response is deemed necessary, EPA denies the allegations in Paragraph 7.

8. The allegations in Paragraph 8 consist of Plaintiff's characterizations of both the context and content of its FOIA request to which no answer is required. The attachments to that request speak for themselves and are the best evidence of their contents. To the extent that a response is deemed necessary, EPA denies the allegations in Paragraph 8.

9. The allegations in Paragraph 9 consist of Plaintiff's characterizations and interpretations of the context and content of its FOIA request to which no answer is required. The attachments to that request speak for themselves and are the best evidence of their contents. To the extent that a response is deemed necessary, EPA denies any and all allegations in Paragraph 9.

10. EPA admits receiving a FOIA request dated August 17, 2012 from Landmark Legal Foundation. The remaining allegations in Paragraph 10 consist of Plaintiffs' characterization of this FOIA request, which speaks for itself and is the best evidence of its contents.

11. EPA admits that it received Plaintiff's FOIA request dated August 17, 2012 at EPA Headquarters and denies the remaining allegations contained in Paragraph 11 for want of knowledge or information.

12. EPA admits that Plaintiff's FOIA request included a request for a waiver of all applicable fees and that Plaintiff requested expedited processing. EPA denies all other allegations contained in Paragraph 12.

13. EPA admits by letter dated August 12, 2012, it acknowledged the Plaintiff's FOIA request and assigned it tracking number HQ-FOI-01861-12. EPA admits that it granted Plaintiff's fee waiver request and denied the request for expedited processing. The remaining allegations in Paragraph 13 consist of Plaintiffs' characterization of this letter, which speaks for itself and is the best evidence of its contents.

14. EPA admits only that it received an administrative appeal dated September 14, 2012 from the Plaintiff contesting the Agency's denial of Plaintiff's request for expedited processing. EPA denies all other allegations contained in Paragraph 14.

15. EPA admits that it denied Plaintiff's appeal by letter dated October 18, 2012. EPA is without knowledge or belief as to the remaining allegations contained in Paragraph 15.

16. EPA admits that it has contacted Plaintiff to acknowledge that the request had been received, and that it has not yet produced responsive records. On September 27, 2012 Jonathan Newton with EPA's Office of the Administrator contacted Landmark Legal Foundation to discuss the complexity of, and unusual circumstances presented by, this request. On October 5, 2012 Landmark Legal Foundation agreed in writing to narrow the scope of the request to only information from senior EPA officials, identified as Program Administrators, Deputy Administrators, and Chiefs of Staff. EPA is currently processing this request and has provided, to the Plaintiff, a date for production. Inasmuch as EPA is processing this request EPA denies withholding any records in response to Plaintiff's FOIA request and therefore denies the remaining allegations in Paragraph 16.

17. EPA admits that Plaintiff has exhausted all administrative remedies on the issue of EPA's denial of expedited processing. EPA denies that Plaintiff has exhausted its administrative remedies with regard to any exemptions or future withholdings.

18. EPA denies that there is any relationship between the current case and the case referenced in Paragraph 18 except insofar as the parties are the same. EPA specifically denies that there is any destruction or concealment of information at issue in this case. The remaining allegations in Paragraph 18 consist of Plaintiff's characterization of a previous case styled *Landmark Legal Foundation v. Environmental Protection Agency*, 272 F. Supp. 2d 70 (D.D.C. 2003), which speaks for itself and is the best evidence of its contents. EPA denies all other allegations, explicit or implied, in Paragraph 18.

CAUSES OF ACTION

19. The allegation in Paragraph 19 is a conclusion of law for which no response is required. To the extent that a response is required, EPA denies the allegations in Paragraph 19.

20. The allegation in Paragraph 20 is a conclusion of law for which no response is required. To the extent that a response is required, EPA denies the allegations in Paragraph 20.

PRAYER FOR RELIEF

The remaining paragraphs of the complaint are Plaintiff's request for relief that require no answer. To the extent that a response is required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

Defendant denies each and every allegation in the Complaint that has not been previously otherwise qualified or denied.

WHEREFORE, Defendant having fully answered, request that Plaintiff's complaint be dismissed with prejudice, that costs be assessed against Plaintiff and that Defendant be awarded any other relief deemed just and proper.

Respectfully submitted,

RONALD C. MACHEN JR. DC BAR #447-889
United States Attorney
For the District of Columbia

DANIEL F. VAN HORN, D.C. BAR # 924092
Chief, Civil Division

/s/

By:

HEATHER D. GRAHAM-OLIVER
Assistant United States Attorney
Judiciary Center Building
555 4th St., N.W.
Washington, D.C. 20530
(202) 305-1334
heather.graham-oliver@usdoj.gov